

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the License
of Jody Weispfenning

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Linda F. Close, on December 29, 2006, at the Renville County Courthouse, 500 East DePue, Olivia, MN 56277. The record closed at the end of the hearing day.

Glen M. Jacobsen, Assistant Renville County Attorney, P. O. Box D, Olivia, MN 56277, appeared on behalf of the Department of Human Services (the Department) and Renville County Human Services (the County).

Katie M. Jendro, Runchey, Louwagie & Wellman, PLLP, 533 West Main St., Marshall, MN 56258, appeared on behalf of Jody Weispfenning (the Licensee).

STATEMENT OF THE ISSUES

Should the temporary immediate suspension of the Licensee's family child care license remain in effect, pending a final order, based on the existence of reasonable cause to believe that the Licensee's actions or failure to comply with applicable law poses an imminent risk of harm to the health, safety, or rights of persons served by the program?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Licensee has been a licensed family child care provider since 1998. Prior to undertaking this work, she worked as a teaching assistant in a special education setting, and eventually obtained a degree in child and family studies.^[1] As a result of her education and experience, the Licensee provides for

her day care children activities that promote the education and socialization of those children.^[2]

2. On the morning of November 13, 2006, parents dropped their children off at the Licensee's home as usual. After the children had been dropped off, the Licensee suddenly remembered that her own children had dental appointments that afternoon. The Licensee called her substitute care provider, but the substitute was unable to provide service that afternoon. If the Licensee wanted to keep the dental appointments, the day care parents would need to pick their children up early that day. So the Licensee began calling parents around 9:45 that morning, asking that they come by 3:45 to pick up their children. The Licensee reached all the parents except for Child A's mother. The Licensee left a message on that mother's cell phone.^[3]

3. By 4:00 that afternoon, all but the parent of Child A had picked up their children. Because the Licensee had not spoken directly with Child A's mother that morning, the Licensee tried to reach the mother again at 3:45, leaving another message on the mother's cell phone. The Licensee then called the mother's place of work, and spoke with a co-worker of the mother, who stated that she would let the mother know she needed to pick Child A up. At approximately 4:10, the Licensee made one more call to the mother, without success.^[4]

4. The dental appointments were scheduled for 4:20 in Hector, which is approximately 5 miles from the Licensee's home. After the 4:10 call to Child's mother, the Licensee decided to leave Child A alone in the garage attached to the Licensee's home. She gave Child A a piece of gum, and told the child her mother would be along soon. Child A was sitting on the garage steps leading into the Licensee's home when the Licensee left.^[5]

5. Sometime after the Licensee left Child A alone in the garage, Child A's mother came to pick the child up.^[6] The mother entered the garage and was surprised to find the child sitting on the steps. By this time, the child was crying.^[7]

6. The Licensee testified that she loves the children she provides care for and that children are her life. She has enjoyed her work as a day care provider since she began it in 1998. She knows that the split-second decision to leave Child A alone was wrong, and that she should have simply taken Child A with her to the dentist when the child's mother failed to pick Child A up in time.^[8]

7. Prior to the November 13th incident with Child A, there has never been a complaint about the Licensee's care of children.^[9] Five day care parents testified at hearing about their trust in the quality of care the Licensee provides.^[10]

8. A maltreatment of minor investigation is underway with respect to the incident involving Child A, but it had not been completed as of the date of the hearing.^[11]

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner and the Administrative Law Judge have jurisdiction in this matter under Minnesota law.

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. The hearing on a temporary immediate suspension is limited to a consideration of whether the temporary suspension should remain in effect pending the Commissioner's final decision.^[12]

4. At hearing, the burden of proof is on the Department to show that reasonable cause exists to believe that the license holder's action or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.^[13]

5. The Department has demonstrated reasonable cause to believe that violations of the family child care licensing laws and rules have occurred.

6. The Department has demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

7. The Memorandum that follows explains the reasons for these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the Order of Temporary Immediate Suspension suspending the family child care license of Jody Weispfenning be AFFIRMED.

Dated: January 5, 2007

s/Linda F. Close

LINDA F. CLOSE

Administrative Law Judge

Reported: Taped, 2 tape(s)
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Department has the burden of demonstrating that reasonable cause exists for the temporary immediate suspension of the Licensee's family child care license. The Department may demonstrate reasonable cause for the suspension by submitting statements, reports, or affidavits to substantiate the allegation that the Licensee violated the rules and statutes governing the license.^[14] Here, the Department submitted the investigative reports of the licensing worker and the police officer who investigated the November 13th incident involving Child A.^[15]

The reasonable cause standard is slight, presumably to assure that vulnerable children are protected pending a full hearing and final decision on the matter. The ALJ finds reasonable cause to believe that the Licensee poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

There can be no question that the Licensee violated the rules regarding supervision of children in day care. Minn. R. pt. 9502.0315, subpt. 29a defines

the supervision required for children in day care, and Minn. R. pt. 9502.0365 mandates a licensee's supervision of children in the licensee's care. By definition, the Licensee was to have been in sight or hearing if Child A was a toddler or preschooler, and available for assistance if Child A was older.^[16] By leaving Child A completely alone, the Licensee clearly violated the rule requiring her to supervise Child A. Fortunately, the child did not suffer any serious injury during the time the child was alone. But the Licensee did create a situation in which serious injury could have happened.

The Licensee's testimony at hearing demonstrated her genuine acceptance of responsibility for her lapse in judgment. The day care parents who testified at hearing spoke in glowing terms of the excellent quality of care the Licensee provides. The incident with Child A is unfortunate, because the Licensee's education, experience, and reputation all indicate a caring educator who loves children. The rule violation constitutes reasonable cause for the Department's action, however, and affirmance of the order for temporary immediate suspension is therefore recommended.

L. F. C.

^[1] Testimony of Licensee; Ex. B.

^[2] Testimony of Julie Ufkes; Testimony of Erin Oldre; Test. of Licensee.

^[3] Test. of Licensee; Ex. 1.

^[4] Test. of Licensee; Ex. 1.

^[5] Test. of Licensee; Ex. 1.

^[6] The record does not reflect exactly how long the child was alone in the garage. The Licensee believed it was 6-8 minutes. Test. of Licensee; Ex. 1.

^[7] Ex. 1.

^[8] Test. of Licensee.

^[9] Ex. 1.

^[10] Test. of Ufkes and Oldre; Testimony of Connie Swenson, Jenny Bergsma, and Sue Krumrey.

^[11] Testimony of Patti Hemingsen.

^[12] Minn. Stat. § 245A.07, subd. 2a (a).

^[13] Minn. Stat. § 245A.07, subd. 2a (a).

^[14] Minn. Stat. § 245A.08, subd. 3.

^[15] See Ex. 1. Because the Licensee did not dispute the incident, the licensing worker testified only to the status of the maltreatment investigation. The Department's case essentially submitted it case through the documents in Exhibit 1.

^[16] The age of Child A was not mentioned at hearing, and the date of birth was redacted from the County's records. See Ex. 1.